IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13790 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE JUNE SAKHVANIA GROUP SEVA SAHKARI MANDALI LTD - Petitioner(s)
Versus
STATE OF GUJARAT & 5 - Respondent(s)

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Appearance :
MR JINESH KAPADIA FOR MR HARIN P RAVAL for Petitioner(s) : 1,
MR MAULIK NANAVATI, AGP for Respondent(s) : 1-4
None for Respondent(s) : 5,
MR GHANSHYAM AMIN for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 17/10/2007

ORAL JUDGMENT

1. This petition challenges the order dated 8th May, 2007 made by respondent No.2 rejecting revision application No.175 of 2004, order dated 29.10.2004 made by respondent No.3 in appeal No.126 of 2004 dismissing the appeal, and order dated 22.07.2004 made by respondent No.4 granting registration to respondent Nos. 5 and 6-Societies.

2. The petitioner is a society which was registered on 30.03.1999 vide Registration No.SE-29747/99. According to the petitioner, the area of operation of the petitioner-Society is spread over villages of Juna Sakhvania, Bhempoda and Jalamkhantna Muvada of Malpur Taluka, District: Sabarkantha. That all the three villages are situated nearby each other within a distance of 1 to 1.5 Kms. According to the petitioner because of some election rivalry one Jaymalji Lakhaji Khant instigated the promoters of respondent Nos. 5 and 6-Societies to have separate societies for the villages of Jalamkhantna Muvada and

Bhempoda. That the petitioner raised objection before respondent No.3 - Assistant District Registrar. However, ultimately the Agricultural and Co-operative Committee recommended registration being granted to respondent Nos. 5 and 6-Societies. Vide order dated 22.07.2004, the said two societies have been registered.

3. According to petitioner, the said two societies have the same area of operation and same aims and objects as that of the petitioner-Society. The petitioner preferred appeal before the Appellate Authority. During the pendency of appeal stay against operation of order dated 22.07.2004 was granted by the Appellate Authority. However, vide impugned order dated 29.10.2004 the appeal came to be dismissed after considering the submissions made by the parties including the petitioner. It has been found by the Appellate Authority that the registration granted to the two societies is in accordance with provisions of Sections 4 and 9 of the Gujarat Co-operative Societies Act, 1961 (the Act). Reference was also invited to circular No.2-3/493 issued by the

Registrar, Gandhinagar that in a Co-operative Society, there should be 100 to 200 members and hence, the proposal made by respondent Nos. 5 and 6 was in order. It has further been found that the financial viability of the two societies has been found by the Committee on the basis of evidence placed before it vide Resolution Nos. 42 and 43 dated 19.01.2004. The Appellate Authority has further found that the Sabarkantha District Central Co-op. Bank has recommended granting of registration. Considering geographical location of the villages it is found there is distance of 3 Kms. between the petitioner-Society and two other societies, and furthermore, due to geographical reasons during monsoon, the two villages of Jalamkhantna Muvada and Bhempoda are cutoff from the village of Juna Sakhvania as certified by Talati-cum-Mantri of Sakhavania Gram Panchayat.

4. The petitioner carried the matter in revision before the respondent No.2- the Revisional Authority vide Revision Application No.175 of 2004. The stay against operation of order of the Appellate

Authority as well as the Assistant District Registrar not having been granted, the matter was brought before this Court by way of Special Civil Application No.15271 of 2004. However, this Court, after hearing the parties, without expressing any opinion on merits of the matter directed the Revisional Authority to decide the revision as expeditiously as possible. The Revisional Authority has vide impugned order dated 8th May, 2007 confirmed the orders of the Appellate Authority as well as the Assistant District Registrar.

5. The learned advocate for the petitioner after reiterating various facts invited attention to the following evidence as stated in paragraph No.4.13 of the petition:

> *"4.13 The petitioner at this stage would also like to point out that before the appellate authority a certificate of the Talati-cum-mantri of Sukhvania dated 13.10.2004 was also produced, inter alia to the effect that 11 persons of village Sukhvania and Bhempoda, who were Khatedars and who are shown to be members of the*

newly registered societies, though having expired, are shown to have become members of the new societies. A copy of the said certificate dated 13.10.2004 is annexed hereto and is marked as ANNEXURE-P to this petition. In addition to the said certificate, it was pointed out that five persons, who are members of the petitioner society and to whom agricultural finance is advanced and who are residents of village Juna Sakhvania have been shown as members of the new societies. Copy of the said certificate is annexed hereto and marked as ANNEXURE-Q to this petition. It was, therefore, pointed out that new societies were illegally registered. Reliance was also placed on affidavits and total 77 affidavits were produced being 37 affidavits of persons of village Bhempoda and 40 affidavits of persons residing in village Jalamkhantna Muvada, pointing out that they had never agreed to nor have made applications for having members of the new societies of the respective villages, despite which they were shown to be members of the new societies. Copies of such affidavits are annexed hereto and marked as ANNEXURE-R collectively to this petition. Said affidavits were specifically produced before the appellate authority along with list under signature of the learned

Advocate, despite which came have not been considered by the appellate authority and the appellate authority has also passed cryptic, unreasoned order without dealing with any of the conditions orally urged and the material produced on record. Therefore, the order of the appellate authority dated 29.10.2004 is also illegal, arbitrary and is politically motivated with a view to see that anyhow registration of the new societies, which is illegally and arbitrary restored to is upheld".

It was submitted that the Authorities have failed to appreciate the said evidence in right perspective. That upon respondent Nos. 5 and 6-Societies coming into existence the petitioner-Society is adversely affected considering the area of operation and that the decision has been taken at the dictates of political higher-ups. It was, therefore, urged that considering the provisions of Section 4, 6 and 9 of the Act, the relief prayed for by the petitioner may be granted quashing and setting aside the orders made by Registering Authority, the Appellate Authority and the Revisional Authority.

6. The learned AGP as well as the learned advocate for respondent Nos. 5 and 6 have been heard.

7. As can be seen from the impugned orders it is apparent that the Authorities have taken into consideration all the submissions made by the parties before it and arrived at a particular conclusion. It is not possible to state that the Authorities have considered any irrelevant factor or omitted to consider any relevant factor. In so far as appreciation of evidence is concerned, suffice it to state that the High Court in exercise of jurisdiction under Article 226 of the Constitution cannot enter into the realm of re-appreciation of evidence as is permissible to a Court of appeal. In absence of any legal infirmity in the decision making process, even if a different view is possible, on the same set of facts and circumstances of the case, that would not permit the High Court to intervene. The reliance on various pieces of evidence on behalf of the petitioner also cannot assist the case of the petitioner. Not only has that evidence been considered by the Authorities but that evidence does

not establish either the factum of the petitioner-Society being adversely affected by coming into existence of respondent Nos. 5 and 6-Society, but there is no evidence to even suggest that the operations of petitioner-Society have been in any manner affected subsequent to the registration being granted to respondent Nos. 5 and 6-Societies.

8. In the circumstances, the petition does not merit acceptance and is accordingly rejected. Notice discharged. There shall be no order as to costs.

(D.A.MEHTA, J.)

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